IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.50 OF 2007
IN
CRIMINAL APPEAL NO.67 OF 2007

Ritesh Rajaram Rathod,&
Dinesh Kundan Gawade ...Applicants.

Versus

State of Maharashtra ...Respondent.

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Mr.M.K.Kocharekar with Mr.Balaji Gadi, Advocate for the Applicants.
Mr.D.P.Adsule, APP, for the State.

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CORAM : SMT.V.K.TAHILRAMANI,J.

DATED : 20th February, 2007.

P.C.:

1. Heard the learned Advocate for the Applicants-orig.accused Nos.1 & 2 and the learned APP for the State.

2. The applicants have been convicted under Sections 392 and 397 of IPC and sentenced to RI for seven years. Applicants are now seeking bail.

3. The learned Advocate for the applicants has submitted that after the arrest, the applicants were shown to the complainant PW-1 Manoj Jain in Borivali Police Station and thereafter TIP was held. He submitted that this fatally affects the prosecution case and the conviction of the

applicants cannot be upheld.

4. On the other hand the learned APP for the State has pointed out that the applicants had entered into the shop of the complainant and had robbed mobile phones at the point of deadly weapons. Immediately after robbery, the complainant PW-1 Manoj Jain came out of the shop and noticed one police constable standing there. He immediately informed the police constable about the incident. The constable in turn passed on this information to the police station and this information was also relayed on wireless. Immediately thereafter, complaint of PW-1 Manoj Jain was recorded by officer of Malad Police Station. While his complaint was being recorded, information was received from Borivali police station that two suspects were intercepted by Borivali Police mobile Van No.II. Therefore, immediately after recording of complaint which was recorded by the Malad Police Station, the complainant went to Borivali Police Station where he saw the accused persons sitting in the police station and he immediately identified them as the robbers. He identified applicant No.1 as the person who held weapon like dagger on his neck and applicant No.2 who was holding a chopper and that they had robbed him at the point of deadly

weapons. It is true that thereafter the complainant has identified these applicants in the TIP. However, looking to the facts of this case, it cannot be said that the showing of these applicants by the Borivali police station to the complainant would vitiate the conviction of the applicants. Moreover, the learned APP has pointed out that as far as applicant No.1 is concerned, he was involved in many cases i.e. C.R.NO.535/98 under sections 452, 427 IPC of Dahisar Police Station, C.R.No.130/01 under sections 342, 452, 324 IPC of Dahisar Police Station, C.R.NO.2849/04 under sections 37(1) (a), 135 IPC of Borivali Police Station etc.. As far as applicant No.2 is concerned he was also involved in a large number of cases i.e. C.R.No.296/91 under sections 326, 114 IPC, C.R.No.129/97 under Sections 392, 397, 324, 326 IPC and C.R.No.584/93, C.R.No.234/94, C.R.No.285/94, C.R.No.617/94, C.R.No.81/95, C.R.No.95/95 of Dindoshi Police Station. He is also involved in C.R.No.485/00 under sections 342, 452, 392, 394, 397 IPC of Khar Police Station.

5. Looking to these facts, I am not inclined to grant bail to the applicants.

6. Application is disposed of.

(SMT.V.K.TAHILRAMANI,J.)